UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,187	06/27/2001	Gordon Brent Vikse	14088	3901

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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH
1600 TCF TOWER
121 SOUTH EIGHT STREET
MINNEAPOLIS, MN 55402

EXAMINER
CAI, WAYNE HUU

ART UNIT	PAPER NUMBER
2681	

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	09/893,187	VIKSE ET AL.
	Examiner	Art Unit	
	Wayne Cai	2681	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>12 December 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

  a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

  b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

  (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

  (b)☐ They raise the issue of new matter (see NOTE below);

  (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

  (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

  The status of the claim(s) is (or will be) as follows:

  Claim(s) allowed: *None*.

  Claim(s) objected to: *None*.

  Claim(s) rejected: *10, 12-23, 28-30 and 35-55*.

  Claim(s) withdrawn from consideration: *None*.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
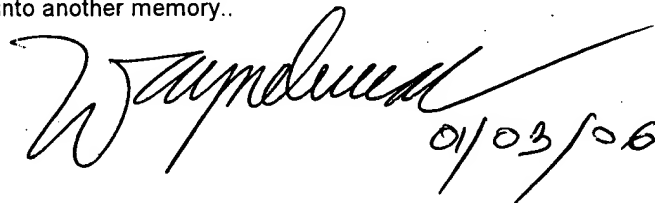
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Although independent claim 10 is amended in which it is consistent with all other searched independent claims, the Examiner would not enter this amendment since it is amended after Final Office Action.

In response to the Applicant's statement "claim 10 has been amended to make it clear that code is first downloaded to a first memory, then the device is rebooted, the code is detected during the reboot, and then it is burned into the programmable memory." The Examiner respectfully requests the Applicant to point out where in the claim the Applicant recites the exact order of how each step should be carried out. Therefore, the Examiner provides prior arts where they are indeed in combination teach all the recited limitations without any specific orders.

The Applicant also asserts that independent claims 18, 21, 28, 44, and 47 recite "two reboots or restarts of the computer for the code to be properly written to the correct memory." The Examiner agrees; however, Hoffman does teach restart, reboot, or shut down the local computer (see paragraph 0027). Since the Applicant solely recites the rebooting or restarting step twice; there is no way the Examiner or one skilled in the art would know exactly why two rebooting or restarting steps are needed. Therefore, as long as the prior arts teach the rebooting or restarting step, it could broadly read on both claimed limitations.

The Applicant further argues that the cited art does not teach "reboot to load it from one memory into another memory as claimed." This is not what is being claimed. In the claim, the Examiner could not even find where the Applicant suggests one skilled in the art to reboot to load from one memory into another memory, even though the Applicant does recites "a first memory" and "programmable memory". Hoffman does teach the first memory (i.e., random access memory or RAM) (see column 13, lines 26-32). Hoffman even further teaches burning the code segment into the programmable memory (i.e., flash memory) (see column 12, lines 19-36, and column 13, lines 26-32). Clearly, Hoffman teaches both limitations. The Examiner, however, could not identify where in the claim the Applicant requires or suggests one skilled in the art to reboot to load from one memory into another memory..

01/03/06

ERIKA A. GARY
PRIMARY EXAMINER

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